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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	
Section 10 of the Communications Act of 1934, as)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage LEC Study Area)	
)	

**REPLY COMMENTS OF ACS OF ANCHORAGE, INC. IN SUPPORT OF ITS
PETITION FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)**

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In the Matter of)	
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Petition of ACS of Anchorage, Inc. Pursuant to)	
Section 10 of the Communications Act of 1934, as)	WC Docket No. 05-251
amended, for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage LEC Study Area)	
)	

**REPLY COMMENTS OF ACS OF ANCHORAGE, INC. IN SUPPORT OF ITS
PETITION FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)**

ACS of Anchorage, Inc. (“ACS”), by its attorneys, hereby submits its response to the comments submitted in the above-reference docket, regarding ACS’s petition for forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act of 1934, as amended (the “Act”).¹

I. INTRODUCTION AND SUMMARY

On September 23, 2005, ACS filed a petition for forbearance from the unbundling obligations of Section 251(c)(3) of the Act as they apply to ACS’s Anchorage, Alaska local exchange carrier (“LEC”) study area and from the application of the related Section 252(d)(1) pricing standards for unbundled network elements (“UNEs”). ACS presented evidence of the firmly entrenched facilities-based competition from General Communication, Inc. (“GCI”) in the Anchorage LEC study area and established that all of the statutory requirements for forbearance pursuant to Section 10 of the Act have been met. ACS demonstrated that mandatory unbundling

¹ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance form Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281 (amended and refiled Sept. 30, 2005) (“Petition”).

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is economically inefficient and unjust in the context of the extremely high levels of facilities-based competition that exist in the Anchorage local exchange market. In its Comments, ACS presented, to the best of its knowledge, the extent and locations of competitive facilities throughout the market. No commenter provided credible evidence to the contrary. Without specific evidence from individual competitors, the Commission would be unable to substantiate their claims about the uneven distribution of facilities in the market. Opponents of the Petition fail to provide such evidence, and therefore their opposition should be given little weight.

The comments do not furnish persuasive evidence to rebut the showing in the Petition that competitors will be able to serve all or virtually all the customers in the market, either today or within a commercially reasonable time, entirely on non-ACS facilities, in the absence of unbundling requirements. Although General Communication Inc. (“GCI”) emphasizes the need for a forward-looking analysis, it merely presents evidence of the number of customers it currently serves on its own facilities, and discusses only in the broadest of terms, with many gaps in its analysis, theoretical limitations on its capability to serve additional customers over its own facilities in the near future. GCI does not deny that it plans to transfer its customers off of ACS’s UNEs within eighteen months. However, GCI fails to show where all of its facilities actually are located, so the Commission can verify the ease with which GCI can reach additional customers throughout the market. Moreover, GCI presents retail line numbers that are wholly misleading. For instance, GCI’s statement that **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of customers are served on ACS’s facilities includes ACS’s customers, and ignores the reality that GCI could serve many of ACS’s customers entirely on GCI’s facilities today. ACS’s forward-looking analysis demonstrates that facilities-based

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competition is well-established throughout Anchorage and will continue to flourish if the Commission forbears from requiring ACS to provide access to UNEs at regulated rates.

The most significant problem with GCI's analysis is that it is based on the erroneous assumption that it should be required to deploy its own facilities only where it has determined that it can earn a comfortable profit. GCI attempts to justify indefinite access to UNEs wherever and whenever a customer would be less costly to serve via UNEs at the government-mandated price than via some alternative facilities. These assumptions are wholly inconsistent with the purpose of mandatory unbundling, and with the realities of providing local exchange service. For instance, in areas that GCI argues do not have the population density sufficient to warrant deployment of its own facilities, GCI's analysis only considers whether revenues from customers in these narrowly circumscribed areas can justify the incremental cost of serving these customers. However, rates in Anchorage are averaged across the entire study area, and thus, the relevant analysis is whether GCI is able to provide service in the entire study area and recover its costs on an averaged basis.

For these reasons, the Commission should reject GCI's proposal to adopt overly-granular geographic and product market definitions. In these reply comments, ACS responds to the claims that there is limited facilities-based competition in Anchorage by providing additional details about the actual and potential competitors for switched access services to both enterprise customers and mass market customers throughout the Anchorage study area. There is no precedent or logical reasoning for GCI's overly narrow market definitions, and GCI's proposal does not reflect the manner in which local exchange services actually are marketed in Anchorage. GCI's proposed market definitions only serve to allow GCI to justify the continued

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use of UNEs in areas that are more challenging for any carrier, including ACS, to serve economically.

The Commission also should reject the arguments of commenters raising issues that are irrelevant to the Anchorage market or contrary to the forbearance standard. ACS is not required to satisfy the non-impairment tests developed by the Commission in the *Triennial Review Order* and the *Triennial Review Remand Order* (“*TRRO*”), which were intended for larger markets. The Commission has established that meeting the non-impairment test is not a precondition to forbearance.² Additionally, provisions of Section 271 that may have been necessary to ensure just and reasonable pricing by Bell operating companies (“BOCs”) never applied to ACS, and are wholly irrelevant to the Commission’s determination in ACS’s case.

The Commission has found significant and sustainable competition in markets with two facilities-based providers. In Anchorage, GCI is a well-entrenched full-service competitor with a range of technological options for providing service without access to UNEs, and there are other network alternatives to ACS and GCI’s facilities over which voice services can be provided as well. Despite the claims of competitive carriers, Section 251(c) has been fully implemented in Anchorage by any standard. Whether or not the Commission relies on its analysis in the *Qwest Order*,³ the pro-competitive aims of Section 251(c)(3) have been fulfilled in Anchorage, and no CLEC can be deemed “impaired” without access to UNEs in this market

² *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170, at ¶ 67 n.177 (rel. Dec. 2, 2005) (“*Qwest Order*”); *see also In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC 2553, at ¶ 39 (2005) (“*TRRO*”).

³ *Qwest Order* at ¶¶ 53-56.

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under any reasonable standard. To achieve the competitive aims of the Act and to benefit consumers in Anchorage, the Commission should promptly grant ACS's request for forbearance from UNEs.

II. GCI FAILS TO PRESENT EVIDENCE SUPPORTING ITS PROPOSED GEOGRAPHIC AND PRODUCT MARKET DEFINITIONS

The two appropriate markets for forbearance analysis are the mass market and enterprise market, each within the Anchorage study area. The Commission should reject the artificially narrow geographic and product markets that GCI advocates.

A. The Study Area Is the Appropriate Geographic Market.

1. Individual Wire Centers Are Not Separate Geographic Markets for Local Exchange Service

ACS seeks forbearance from the unbundling requirements of Section 251(c)(3) of the Act and the related pricing provisions of Section 252(d)(1) throughout the Anchorage LEC study area. The comments in this proceeding do not provide evidence that a more granular geographic market would be appropriate. Both ACS and GCI agree that wire centers are not the appropriate geographic market definition.⁴ However, in light of the *Qwest Order*'s geographically tailored relief based on wire centers, ACS provides the Commission with

⁴ *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at 15 n.42 ("GCI Opposition") ("GCI does not believe that wire centers are the appropriate geographic market" because GCI's plants do "not conform neatly with historical wire center boundaries.").

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additional information about its geographic and product markets, including access line breakdowns by wire center, in Kenneth Sprain's Statement, attached hereto as Exhibit A.⁵

As illustrated by the attached map, the Anchorage LEC study area is comprised of five wire centers: Central, East, North, South and West.⁶ As of December 31, 2005, ACS served a total of 37,409 residential access lines and 49,514 business access lines throughout Anchorage. The residential line numbers range from 3,606 in the Central wire center to 13,042 in the South wire center. ACS's business lines vary from 3,278 in the East wire center to 17,564 in the Central wire center.⁷ ACS also provides its access lines as of November 30, 2005 to provide a useful comparison to the information provided by GCI about access line counts in the market.

2. Individual Customer Premises Are Not Appropriate Market Definitions for Analyzing Whether Forbearance from Unbundling Is Warranted

GCI argues that the appropriate geographic market for local exchange and exchange access services is "each residential customer's location."⁸ Such a market definition requires information about the locations of GCI's customers and its facilities. Even if this

⁵ Statement of Kenneth L. Sprain, *Reply Comments of ACS of Anchorage, Inc. in Support of its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, attached hereto as Exhibit A ("Sprain Statement").

⁶ *Id.* at ¶ 3, Exhibit A-1. Although GCI argues that O'Malley and Rabbit Creek are also wire centers, they do not have the capability of a true end office and are merely outlying areas where GCI has elected to collocate its switch. *Id.* at ¶ 3; Reply Statement of Thomas R. Meade, *Reply Comments of ACS in Support of its Petition for Forbearance from Sections 251(c)(3) and (252(d)(1))*, WC Docket No. 05-281, at ¶ 8, attached hereto as Exhibit D ("Meade Reply Statement").

⁷ Sprain Statement at ¶ 6.

⁸ GCI Opposition at 13. GCI disputes ACS's use of the Anchorage study area but never cogently proposes an alternative geographic market definition. See Reply Statement of Howard A. Shelanski in Support of ACS, *Reply Comments of ACS in Support of its Petition for Forbearance from Sections 251(c)(3) and (252(d)(1))*, WC Docket No. 05-281, at ¶ 4, attached hereto as Exhibit G ("Shelanski Reply Statement").

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artificially narrow market definition were appropriate, GCI has not provided the specific information it requires.

Although specific data about GCI's customers and facilities may be relevant to the forbearance analysis, each building or customer does not comprise an individual market. The relevant market is an area within which *customers* have comparable choices.⁹ Therefore, markets comprised of individual customers are inconsistent with the Commission's test in forbearance proceedings.¹⁰ Narrowing the geographic market into artificially segmented groups of customers to ensure that forbearance would never be appropriate in these areas would defeat the Act's goal of competitive facilities deployment.¹¹ Likewise, using individual buildings as "markets" would provide the undesirable incentive for companies to remain "impaired" as to certain customers in hopes of continuing to receive regulated UNE rates where those rates are lower than the cost of building alternative facilities.¹²

Furthermore, such narrow definitions contradict the Commission's prior reasoning that forbearance does not require a CLEC to be fully competitive in all geographic

⁹ *Qwest Order* at ¶ 18 (defining a geographic market as "'an area in which all customers in that area will likely face the same competitive alternatives for a product'" (quoting *In the Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Nynex Corporation to its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20016-17, at ¶ 54 (1997))).

¹⁰ Shelanski Reply Statement at ¶ 8.

¹¹ Statement of Howard A. Shelanski in Support of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at ¶¶ 16, 17, attached thereto as Exhibit D ("Shelanski Statement").

¹² *See id.*

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areas.¹³ By taking an incremental approach to defining markets, there will always be small areas where's GCI's costs of deploying facilities is uneconomical compared to serving the same customers using UNEs priced based on costs averaged over the entire study area. Therefore, deploying facilities to each individual customer need not be profitable on an incremental basis as long as the carrier can recover its costs averaged over the entire geographic area.¹⁴

3. The Market Should Not Be Defined According to Where GCI Has Chosen to Construct Facilities

GCI's designation of seven smaller "wire centers" inappropriately carves out high cost areas of Anchorage. GCI arbitrarily designates O'Malley and Rabbit Creek as separate wire centers when they are in fact merely remote locations where GCI has elected to collocate its facilities to gain access to ACS's loop.¹⁵ These remotes are part of the South wire center.¹⁶ Instead, GCI's depiction of the South wire center includes only the densely populated portion of the South wire center service area. GCI carves out the less densely populated Rabbit Creek and O'Malley areas, which have less customers overall, and in which GCI has determined it is more cost effective to serve a higher percentage of its customers over ACS's UNEs than to build out

¹³ Shelanski Reply Statement at ¶ 8 (discussing *Qwest Order* at ¶ 69).

¹⁴ Reply Statement of David C. Blessing in Support of ACS, *Reply Comments of ACS in Support of its Petition for Forbearance from Sections 251(c)(3) and (252(d)(1))*, WC Docket No. 05-281, at ¶ 7.c ("Blessing Reply Statement").

¹⁵ GCI Opposition at 15 n.42.

¹⁶ Sprain Statement at ¶ 3.

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its facilities to areas with less revenue potential. Nevertheless, by GCI's own admission, most of its customers in these less densely populated areas are "near" its cable plant.¹⁷

GCI relies on the NECA Tariff F.C.C. No. 4,¹⁸ which identifies a number of "wire centers;" however, the remote locations (O'Malley, Rabbit Creek, Elmendorf, Ft. Richardson, Girdwood, and Indian) do not have the capability of a true end office.¹⁹ End users served from a remote location require a connection to a host switch at a central office to call outside of the area served by the remote. Neither interexchange carriers nor wireless carriers are interconnected at any remote location.²⁰

GCI's distorted wire center breakdown illustrates the gaming opportunities that ACS identified in its Petition, which could provide incentives for competitors to collocate facilities in a manner that avoids crossing the threshold for non-impairment.²¹ While the cost of serving lower density areas may be high for any carrier, it is possible to recover these costs over a larger area that includes higher density areas. GCI should not be able to dictate the relevant geographic market merely based on where it chooses (or does not choose) to deploy its facilities.

¹⁷ See Declaration of William P. Zarakas, *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at Exhibits V, VI, attached thereto as Exhibit C ("Zarakas Decl.") (O'Malley: [BEGIN CONFIDENTIAL][END CONFIDENTIAL] business and [BEGIN CONFIDENTIAL][END CONFIDENTIAL] residential are near cable facilities; Rabbit Creek: [BEGIN CONFIDENTIAL][END CONFIDENTIAL] business and [BEGIN CONFIDENTIAL][END CONFIDENTIAL] residential are near cable facilities).

¹⁸ GCI Opposition at 15 n.42.

¹⁹ Sprain Statement at ¶ 3.

²⁰ *Id.*

²¹ Petition at 28.

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4. Customers Throughout the Anchorage Study Area Enjoy Substantially the Same Competitive Benefits, and Should Be Considered One Geographic Market

Because of Anchorage's limited size and fairly uniform distribution of ACS and GCI facilities, the entire Anchorage study area is the appropriate geographic market.²² As described below, both ACS and its competitors market the same services and prices to all customers across the study area, ensuring all customers benefit from competition anywhere in the study area.²³ GCI argues that neither the Anchorage study area nor an individual wire center is the relevant geographic market.²⁴ GCI notes that its cable plant does not reach all customers within the Anchorage study area, and that its network footprint does not match ACS wire center boundaries.²⁵ The assertion that GCI's cable network is not ubiquitous within the study area is irrelevant.²⁶ In the *Qwest Order*, the Commission held that competitive facilities need not reach 100% of the customers in the geographic area.²⁷ Furthermore, as discussed below, GCI has the

²² Because "consumers can reasonably search for competing services" throughout the Anchorage study area, the Commission should use the entire study area as the relevant geographic market when determining whether ACS has met the statutory test for forbearance. *In the Matter of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 05-148, at ¶ 52 (2005) at ¶ 52 ("*Sprint-Nextel Order*") (citing U.S. Supreme Court decisions).

²³ See *infra* Section III.B.

²⁴ GCI Opposition at 13-15.

²⁵ *Id.* at 14, 15.

²⁶ Likewise, the study area definition should not be impacted by the fact that GCI's network does not reach the subdivisions within Anchorage that GCI serves exclusively. See *infra* Part III.A.4.

²⁷ *Qwest Order* at ¶¶ 69-70, 71 (Commission has rejected arguments that fully competitive wholesale market is a mandatory precursor to a finding that Section 10(a)(1) is satisfied.).

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technological capability to serve customers (both business and residential) in the study area that it cannot reach using its cable network.²⁸

Significantly, GCI does acknowledge that its certificated LEC service area is coextensive with ACS's study area.²⁹ This fact supports GCI's own alternative geographic market definition, which consists of "an area in which all *customers* . . . likely face the same competitive alternatives for the product in question."³⁰ GCI's cable network reaches nearly all households in the study area.³¹ GCI makes broad-sweeping statements about the lack of competition in some regions, but never reveals the precise locations of its customers or facilities. If GCI believes customers in parts of the study area lack a meaningful facilities-based choice, it should show where these customers are, and where GCI's facilities reach—and do not reach—today. Further, because the analysis is forward-looking, GCI should put on the record the same information it has provided investors about its build-out plans. ACS believes these plans reveal that GCI is capable of and intends to provide service throughout the market fully independent of ACS's UNEs within eighteen months. Without such data, the Commission cannot compare the competition in each part of the study area as GCI proposes.

²⁸ Statement of Randall W. Poor, *Reply Comments of ACS of Anchorage, Inc. in Support of its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, at ¶ 4, attached hereto as Exhibit B; Statement of Charles L. Jackson, *Reply Comments of ACS of Anchorage, Inc. in Support of its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, at ¶¶ 5, 10, attached hereto as Exhibit E.

²⁹ Declaration of David E. M. Sappington, *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at ¶ 36, attached thereto as Exhibit D ("Sappington Decl.").

³⁰ GCI Opposition at 14 (emphasis added).

³¹ Shelanski Reply Statement at ¶ 14; Zarakas Decl. at Exhibit I.

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ACS has access only to publicly available information about the location of competitors' facilities. The Petition offered evidence of facilities-based competition from multiple providers and potential providers throughout the small study area, and such evidence has not been refuted with any credit evidence by GCI or other commenters. As discussed below, evidence of competitive facilities deployment throughout the study area continues to grow, as competitors unveil new service offerings and new technological advances reaching customers throughout the Anchorage study area. For the narrow scope of relief sought by ACS, the Anchorage study area is the most appropriate geographic market in which to grant forbearance from the requirements of Section 251(c)(3).

B. GCI's Proposed Product Market Definitions Are Overly Granular and Unsupported by Precedent or Marketplace Realities.

The Commission need only differentiate between the mass market and enterprise product markets throughout Anchorage. GCI first cites the two basic product markets for UNEs, enterprise and mass markets in the *Qwest Order*.³² Yet according to GCI, the Commission should parse these two markets by further dividing the residential mass market for voice

³² GCI Opposition at 65. Other commenters, such as Covad Communications Group, Inc. ("Covad") incorrectly assert that the *Qwest Order* divides the market into three categories: (1) switched access services for the mass market; (2) broadband Internet access services for the mass market; and (3) the enterprise market. Initial Comments of Covad, *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 11 ("Covad Comments"). These three categories are used in the *Qwest Order*'s nondominance section, but mass and enterprise markets are the only two product markets analyzed in UNE forbearance analysis. Compare *Qwest Order* at ¶ 22 with *id.* at ¶ 66.

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telephony into MDUs and non-MDUs; and dividing enterprise customers into small business and medium/large business categories based on their varying product needs.³³

The granularity of the product definitions proposed by GCI lacks support in either legal precedent or the realities of the Anchorage market. The Commission has divided the UNE product markets between residential and business customers. In the *Qwest Order* UNE forbearance analysis, the Commission divided the product market into two categories—mass market and enterprise customer markets.³⁴ Customers do not become individual market segments simply because they have varying needs.³⁵ Product markets are determined by whether services are adequate substitutes for one another and by whether a provider uses different tools to market and provide the services.³⁶ Because there are multiple ways to serve a customer, the “Commission defines relevant product markets by identifying and aggregating consumers with similar demand patterns.”³⁷ As discussed below, the only services that are distinct products

³³ GCI Opposition at 65-66.

³⁴ *Qwest Order* at ¶ 66.

³⁵ Shelanski Statement at ¶ 9.

³⁶ *In re Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, at ¶ 68 (1999) (“*SBC/Ameritech Order*”) (distinguishing mass market “from larger business customers because the services offered to one group may not be adequate or feasible substitutes for services offered to the other group, and because firms need different assets and capabilities to target these two markets successfully”); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 at ¶ 164 (1998) (dividing the mass and enterprise “markets because the services offered to one group may not be adequate or feasible substitutes for services offered to the other group, and because firms need different assets and capabilities to target these two markets successfully”); *see also* Shelanski Statement at ¶ 9.

³⁷ *Qwest Order* at ¶ 18.

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marketed differently in Anchorage are those provided to mass market customers on the one hand, and enterprise customers on the other.

1. Mass Market Customers Comprise A Single Service Market

The mass market should be treated as a single product market in Anchorage, as it was in Omaha.

a. Mass Market Customers All Benefit from the Same Array of Service Offerings at the Same Prices

Mass market customers currently may choose among ACS, GCI and AT&T for local exchange service, and also face a rapidly growing selection of intermodal carriers, as discussed in more detail below. Fixed and mobile wireless providers offer both traditional local exchange voice telephony and advanced services to mass market customers.³⁸ VOIP providers offer additional telephony options to any customer with a broadband connection, which GCI offers throughout the residential market in Anchorage.³⁹

Carriers in Anchorage offer uniform rates and services to all mass market customers.⁴⁰ For instance, ACS's marketing plan for residential service offerings is consistent throughout the market, and often throughout the state. ACS charges all similarly situated customers in the market the same rates for the same service.⁴¹ ACS is further constrained by the RCA's requirements that as an ILEC, ACS maintain uniform retail rates within a study area.⁴²

³⁸ David E. Eisenberg, *Reply Comments of ACS of Anchorage, Inc. in Support of its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, ¶¶ 9, 10 attached hereto as Exhibit C ("Eisenberg Statement"); Jackson Statement at ¶¶ 23-24.

³⁹ Eisenberg Statement at ¶ 9.

⁴⁰ *Id.* at ¶¶ 2, 5.

⁴¹ *Id.* at ¶ 3.

⁴² *Id.* at ¶ 4.

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Therefore, all mass market customers in the entire study area enjoy the same competitive choices. GCI also markets its services and rates on a consistent basis throughout its certificated area (*i.e.*, the Anchorage study area). GCI's advertised rates place additional pressure on ACS to offer service throughout the study area at competitive rates, even to customers that GCI is unwilling or unable to serve.⁴³

b. It Is Inappropriate To Single Out Individual Buildings or Customers as "Markets"; All Mass Market Customers Enjoy Facilities-Based Competition, Including Those In MDUs

Within the mass market, GCI tries to reduce the forbearance analysis to the level of individual customers. However, even looking at the "submarkets" GCI identifies, ACS believes that all customers have the benefit of effective competition in Anchorage. Residential buildings within multiple dwelling units ("MDUs") do not constitute a separate product market. ACS offers customers in MDUs the same products and services available to all residential customers in the study area, at the same rates available throughout the study area. ACS does not offer products or services that are tailored to end-users in MDUs. These customers are offered the same services and pricing as other mass market customers in the study area. Therefore, from a marketing perspective, there is no separate MDU product market.⁴⁴

GCI argues that the high cost of serving a small number of customers in an MDU is grounds for treating service to MDUs as a separate market.⁴⁵ However, the costs often associated with serving MDUs do not render them an individual market. First, GCI is not impaired in serving residential customers in MDUs over its own facilities. Most older residential

⁴³ *Id.* at ¶ 3.

⁴⁴ *Id.* at ¶ 6.

⁴⁵ GCI Opposition at 27-28.

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MDUs in Anchorage typically have four to six units, and thus, GCI's claimed technical capabilities are sufficient to serve these customers.⁴⁶ Further, GCI has the same opportunities as ACS or any carrier seeking access to serve larger MDUs on an exclusive basis. Such opportunities are growing, as higher density construction is more prevalent in Anchorage in recent years.⁴⁷ GCI has demonstrated that it is capable of deploying cable, copper and fiber facilities to serve large buildings.⁴⁸ GCI has the added benefit of serving only those MDUs that it determines will be profitable. As GCI makes clear in its Opposition, GCI opts to serve only those customers that are guaranteed to result in a profit.⁴⁹ As the carrier of last resort, ACS is obligated to serve all customers, even if only one customer in a building requests service from ACS.⁵⁰

c. There Is No Justification for Continuing the Unbundling Mandate for Subloops, NIDs and Inside Wiring

GCI also argues that ACS has not adequately addressed forbearance from subloops, inside wire and NIDs, however, GCI would not need access to these elements where it serves the customer on its own loop facilities. As a threshold matter, subloops, by definition, are part of the loop;⁵¹ ACS has demonstrated that mandatory access to loop unbundling is no longer

⁴⁶ *Id.* at ¶ 5.

⁴⁷ *See id.*

⁴⁸ Poor Statement at ¶¶ 6, 8.

⁴⁹ Declaration of Gina Borland, *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at ¶ 7, attached thereto as Exhibit A ("Borland Decl.").

⁵⁰ Poor Statement at ¶ 5. *See also*, Sprain Statement at ¶ 6 (ACS must maintain plant for which it does not receive revenue).

⁵¹ *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order and Remand and Further Notice of Proposed Rulemaking*, Report and Order, 18 FCC Rcd 16978, at ¶ 343 (2003) ("TRO"). The Commission defines subloops as "any

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justified anywhere in Anchorage, and the same reasoning applies perforce to the subloop unbundling requirement. It should be eliminated because there simply is no continuing justification for mandating access to UNEs in Anchorage, as fully explained in the Petition.

Moreover, for customers that GCI serves using its own DLPS or other loop facilities, GCI installs its own subloop and NID.⁵² The ACS NID and subloop are simply not useful to a facilities-based carrier using non-copper plant. Even if GCI uses existing inside wiring and conduit in an MDU, it continues to have a right of access to conduit pursuant to other statutory and regulatory provisions.⁵³ To the extent the MDU owner controls access to MDU wiring between the NID and the demarcation point of the individual customer premises, GCI can gain access by the Commission's inside wiring rules.⁵⁴ To the extent ACS controls access to the in-building wiring, any telecommunications carrier can gain access to any conduits, ducts and rights-of-way to which ACS has access, pursuant to Section 224 of the Act.⁵⁵ These rules ensure that ACS could not prevent GCI from accessing customers in any MDU where ACS has exclusive facilities, despite the fact that Section 224 does not give ACS a right of access to

portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire." *Id.* at 207 n.1007 (internal quotations and citation omitted).

⁵² Poor Statement at ¶ 3.

⁵³ In older buildings in Anchorage, the demarcation point has been moved to the minimum point of entry. *Id.* Thus, all inside wiring, including that of MDUs, is controlled by the customer, and not ACS.

⁵⁴ *See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association*, CC Docket No. 88-57, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-209 (rel. June 17, 1997).

⁵⁵ *See* 47 U.S.C. § 224; 47 C.F.R. §§ 68.105, 68.106.

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conduit in MDUs where GCI has exclusive access.⁵⁶ Finally, beyond the demarcation point, access to inside wiring is entirely within the customer's control, and governed by the FCC's inside wiring rules, which will remain in effect in Anchorage.

2. Enterprise Customers Comprise a Single Service Market

Given the size and nature of the Anchorage study area, the enterprise market should not be subdivided into small, medium and large businesses, as GCI proposes. Almost all local offerings in Anchorage, both residential and business, are served over DS0 capacity lines.⁵⁷ The vast majority of enterprise customers in Anchorage typically order four or fewer access lines.⁵⁸ There are relatively few businesses in Anchorage that even require DS1 capacity. In fact, ACS serves only [BEGIN CONFIDENTIAL][END CONFIDENTIAL] using DS-3 capacity in all of Anchorage. GCI itself acknowledges that its enterprise customers in Anchorage do not purchase capacity higher than DS-1.⁵⁹ The nature of enterprise customers in Anchorage supports a single enterprise service market, as the Commission determined in the *Qwest Order*.⁶⁰

Although GCI advocates treating virtually every business customer as a separate market, in practice, Anchorage carriers do not market services on such an individual basis.

Although ACS offers enterprise customers a range of products tailored to the varying needs of

⁵⁶ Section 224(f)(1) guarantees cable companies and telecommunications carriers (such as GCI) a right of access to poles, ducts, conduits and rights-of-way controlled by a utility; however, ILECs (such as ACS) are excluded from the class of "telecommunications carriers" that enjoy this right. See 47 U.S.C. §§224(a)(5), (f)(1).

⁵⁷ Eisenberg Statement at ¶ 5.

⁵⁸ *Id.* at ¶ 8.

⁵⁹ GCI Opposition at 18, n. 52.

⁶⁰ *Qwest Order* at ¶ 66.

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these customers, ACS makes available the same services and rates to all enterprise customers regardless of their geographic location. The same options for DS0, DS1, and other high-capacity services are available to all similarly situated enterprise customers throughout the Anchorage study area regardless of whether or not GCI serves the customer location.⁶¹ Enterprise customers typically have specific capacity needs but do not require a particular technology.⁶²

As such, ACS and GCI both have multiple ways to provide service to these customers. The artificially narrow categories GCI proposes are unworkable for the Commission to apply in forbearance analysis.⁶³ The two categories used in the *Qwest Order* are sufficient to divide the product market in Anchorage because customers have comparable choices within the mass market and enterprise categories.

III. OPPONENTS HAVE NOT PRESENTED EVIDENCE TO REFUTE ACS'S DEMONSTRATION THAT THE REQUIREMENTS OF SECTION 10 OF THE ACT HAVE BEEN MET IN ANCHORAGE

A. Facilities-Based Competition for Telecommunications Services Is Sufficiently Developed Throughout the ACS Study Area in All Product Markets.

The comments support ACS's demonstration that extensive competition throughout the Anchorage retail market warrants forbearance from unbundling requirements and

⁶¹ Eisenberg Statement at ¶ 6.

⁶² *Id.* at ¶ 6.

⁶³ As discussed further below, GCI's alleged impairment in serving business customer does not warrant treatment of certain business customers as a different market segment. GCI also grossly mischaracterizes the circumstances surrounding the removal of GCI's cable wiring from ACS's conduit in the entrance facilities of the Peanut Farm, Alaska Dance Theater, and Bailey's Furniture. *See* GCI Opposition at 32. As described in Mr. Poor's statement, GCI wrongfully installed its wiring into the entrance conduit that ACS constructed at each of those locations without ACS's consent and before ACS had installed any of its own wiring. *See* Poor Statement at ¶ 7. Therefore, it is entirely disingenuous for GCI to rely on distorted recounting of its inability to access MDU entrance facilities on certain properties in Anchorage to support its claim that it is impaired with respect to serving enterprise customers.

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TELRIC pricing provisions. As ACS explained in its Petition, the proper focus of the Commission's analysis in this proceeding is the extent of retail competition.⁶⁴

GCI asserts that it relies on ACS's network to serve many of its customers, and in the absence of alternatives at the wholesale level, competition in the Anchorage market will suffer. This argument is misleading on several levels. To begin with, the record shows that GCI currently has extensive facilities and retail market share, which standing alone are sufficient to justify forbearance. Further, alternative networks in addition to GCI's offer actual and potential facilities-based retail competition in the Anchorage market. Moreover, the Commission's forbearance analysis should employ a forward-looking approach that considers not only the retail customers that competitors can serve today, but also those they can access in a commercially reasonable amount of time in the future. GCI has demonstrated its ability to use alternative methods of serving its customer without ACS's UNEs. Additionally, other technologies and last mile options are available in the marketplace. GCI merely chooses to ignore these options.

1. GCI's Current Market Presence Justifies Forbearance.

Based on its predominant share of the retail market and the extensive network it possesses today, GCI provides significant competition in the Anchorage study area all by itself. GCI argues that the hypothetical monopolist test guides the relevant geographic and product market definitions.⁶⁵ This test asks whether a hypothetical, profit-maximizing monopolist could

⁶⁴ Shelanski Statement at ¶ 21. The Commission confirmed in the *Qwest Order* that retail competition should be the focus of forbearance analysis. *Qwest Order* at ¶ 67. For this reason, ACS cited the RCA's characterization of "mature competition" in Anchorage based on the retail market. See Petition at 10; GCI Opposition at 35 n.145.

⁶⁵ See Sappington Decl. at ¶¶ 33, 25.

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impose a small but significant and non-transitory increase in price in the particular group of products or geographic region.⁶⁶ However, GCI never assesses whether ACS could profitably raise retail prices to consumers in a particular area or for any product. Perhaps GCI avoids this analysis because, with less than half the retail market, ACS obviously is not a monopolist.⁶⁷ If ACS were to raise prices, it would risk immediate loss of customers already accessible by GCI, and loss of the remainder with a short time.⁶⁸

GCI is unsuccessful in rebutting ACS's demonstration that supply is elastic in Anchorage.⁶⁹ As explained in Dr. Shelanski's statement, attached hereto as Exhibit G, there is a fundamental flaw in Dr. Sappington's analysis. In arguing that the supply of facilities-based service in Anchorage is not sufficiently elastic to prevent ACS from increasing prices, Dr. Sappington relies on numbers that do not correctly state ACS's market share or GCI's reliance on ACS's facilities. As Dr. Shelanski notes, Dr. Sappington assumes that ACS is the "exclusive facilities-based operator" for 81% of the Anchorage market and thus, a "dominant supplier" of essential inputs.⁷⁰ However, Dr. Sappington's assumed market share includes ACS's own

⁶⁶ Shelanski Reply Statement at ¶ 7.

⁶⁷ *Id.* (further explaining that even if customers are served only by one provider, as long as another competitor "can step in and provide [them] service within a reasonable time," the hypothetical monopolist test fails).

⁶⁸ *Id.* at ¶¶ 23-26; *see also* Blessing Reply Statement at ¶ 5. As discussed *infra*, GCI has not refuted ACS's assertion that it has the ability to extend its facilities with minimal additional investment and in a commercially reasonable period. *See infra* Part III.A.1.b.

⁶⁹ Shelanski Statement at ¶¶ 11-13.

⁷⁰ Shelanski Reply Statement at ¶ 23.

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market share, disregards the ACS customers GCI is currently capable of serving over its own facilities, and does not consider the amount of facilities GCI could feasibly employ.⁷¹

GCI also is unpersuasive in arguing that supply is inelastic because GCI faces limits on its ability to build facilities, “including Anchorage’s brief construction season and paucity of seasonal workers” is similarly deficient.⁷² GCI ignores the obvious fact that ACS and all competitors in Anchorage face these same constraints.⁷³ Using GCI’s logic, ACS would be subject to unbundling requirements no matter how great GCI’s market share becomes, because of the difficulties inherent in serving the Anchorage market. As the Commission has acknowledged, unbundling obligations do not last forever.⁷⁴ GCI fails to present any rational argument that ACS should be viewed as having market power or would be able to raise rates upon a grant of forbearance from UNEs.

ACS currently possesses less than 50% of the market share of the Anchorage local exchange and exchange access market.⁷⁵ Consequently, the RCA has found the retail local exchange market competitive and ACS to be nondominant.⁷⁶ The CLECs in Anchorage, lead by GCI, with its plurality (if not a majority) of the market, now enjoy more residential mass market

⁷¹ Shelanski Reply Statement at ¶¶ 12-13.

⁷² GCI Opposition at 74.

⁷³ See *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

⁷⁴ See, e.g., *TRRO* at ¶ 2.

⁷⁵ Statement of Thomas R. Meade, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at ¶ 8, attached thereto as Exhibit A (“Meade Statement”).

⁷⁶ *In the Matter of Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, Order Adopting Regulations, RCA Docket No. R-03-03 (June 22, 2005).

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share than ACS. GCI is a formidable competitor with significant resources, and multiple lines of business.⁷⁷ The RCA has denied GCI access to UNEs in rural markets in Alaska because it has determined that GCI has sufficient resources and know-how to deploy its own local exchange facilities in these markets.⁷⁸ If GCI can serve higher-cost rural markets without access to UNEs at regulated prices, GCI surely has sufficient resources and know-how to deploy its own facilities in the non-rural Anchorage market.

The enterprise market is no less competitive than the mass market despite GCI's slightly lower market share among enterprise customers. GCI aggressively markets its services to enterprise customers and has a substantial enterprise market share, its avowed specialization in serving residential customers notwithstanding.⁷⁹ GCI provided enterprise customers competitive long-distance telecommunications services even before it entered the cable or broadband markets. GCI has deployed a far-reaching fiber network in the Anchorage study area, as well as an extensive wireless network.⁸⁰ GCI provided virtually no information in its Opposition on its non-wireline facilities yet it has represented to the RCA that it can readily use them as an

⁷⁷ See Petition at 7-8. GCI now serves [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of the market. Zarakas Decl. at Exhibit III.

⁷⁸ *In the Matter of the Petition for Suspension and Modification of Certain Section 251(c) Obligations to Section 251(f)(2) of the Telecommunications Act of 1996 filed by Matanuska Telephone Association Inc.*, U-05-46, Order Granting in Part, Petition for Suspension and Modification and Affirming Electronic Rulings, at 47 (Dec. 20, 2005) (“MTA Order”).

⁷⁹ Eisenberg Statement at ¶ 8.

⁸⁰ Meade Reply Statement at ¶ 3; Jackson Statement at ¶¶ 8-10. GCI has recently acquired a majority of the Alaskan wireless provider, Alaska DigiTel. See Eisenberg Statement at ¶ 9.

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alternative to wireline technology.⁸¹ Indeed, GCI wireless facilities can be seen at enterprise customer locations around Anchorage.⁸²

ACS does not have market power to unilaterally raise retail rates in the Anchorage market. Any customer GCI's networks do not reach today, it will be able to serve over one or more of its technologies with minimum effort in the near future. Based on its share of the residential market, its impressive marketing and customer service success, and its capabilities to serve enterprise customers through a variety of platforms, GCI represents an established competitor in both the enterprise and mass markets.⁸³ As discussed below, other competitors also provide these customers with substitute services, further enhancing competition in Anchorage.⁸⁴

2. GCI Has The Ability To Serve A Significant Portion of Its Customers Using Its Existing Cable and Fiber Facilities

GCI has a well-developed mass market network⁸⁵ as well as high-capacity facilities designed to serve the enterprise market. GCI's Opposition confirms ACS's belief that GCI already has cable, fiber and wireless facilities that pass or are near to many business

⁸¹ GCI, Letter to RCA re: Docket U-05-4, at 3 (Mar. 22, 2005) (attached to Jackson Statement at Exhibit E-6); GCI, Letter to RCA re: Docket U-05-4, at 2 (Aug. 23, 2005) (attached to Jackson Statement as Exhibit E-7).

⁸² Poor Statement at ¶ 4.

⁸³ See *Qwest Order* at ¶ 66 (concluding that based on Cox's large share of mass market customers, its possession of the facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its established presence in Omaha, and its marketing efforts, Cox posed a substantial competitive threat to Qwest for higher revenue enterprise services).

⁸⁴ See *infra* Part III.A.3.

⁸⁵ GCI has its own switching and transport facilities, its own wireless local loops, and its own fiber, copper and coaxial cable loop facilities. Jackson Statement at ¶¶ 8-10; GCI Opposition at 21, 30, 35 n.146.

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customer locations.⁸⁶ GCI's long history as one of the primary long-distance service providers in Anchorage has given GCI advantages that Cox did not have in Omaha.⁸⁷ These advantages include GCI's node and fiber deployment pre-dating the 1996 Act, and far more extensive ability to reach enterprise customers over its own facilities today.⁸⁸ From GCI's fiber map, it appears that GCI's fiber facilities run through the densely populated areas in Anchorage, and are particularly extensive in the large business districts within areas served by the Central and North wire centers.⁸⁹ Before any credence is given to GCI's claims about the limited distribution of its cable, copper and fiber plant, GCI should be required to provide more detailed maps indicating the location of its plant relative to customer locations. The capability of GCI's wireless facilities also must be taken into consideration.⁹⁰

By its own admission, GCI has the capability of reaching [BEGIN
CONFIDENTIAL][END CONFIDENTIAL] of its residential customers, [BEGIN
CONFIDENTIAL][END CONFIDENTIAL] of its small-business customers, and [BEGIN
CONFIDENTIAL][END CONFIDENTIAL] of its medium/large business customers though
its own network. As discussed in Dr. Shelanski's and Mr. Blessing's statements, GCI's method

⁸⁶ See Zarakas Decl. at Exhibit I, V, VI; Sprain Statement at ¶ 4 (stating that larger businesses are concentrated in the Central and North wire centers, where GCI has fiber facilities); Poor Statement at ¶ 4 (documenting GCI's wireless local loops on businesses throughout Anchorage).

⁸⁷ See Meade Reply Statement at ¶ 3.

⁸⁸ See *id.*; see also Declaration of Richard Dowling, GCI Opposition, at ¶ 3 (attached thereto as Exhibit G).

⁸⁹ See Declaration of Blain Brown, GCI Opposition, at Exhibit BB1, attached thereto as Exhibit J; see also Meade Reply Statement at ¶ 3. This confirms ACS's belief that GCI has significant fiber facilities in these areas. See Sprain Statement at ¶ 4 (providing a description of business districts in Anchorage).

⁹⁰ Jackson Statement at ¶¶ 24-26.

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for projecting the number of customers it can “economically” serve is opaque and difficult to assess, and should therefore receive little weight.⁹¹ However, even taking at face value these “black box” projections, GCI appears to be capable of serving almost all residential customers and a substantial portion of business customers in the Anchorage study area entirely over its own facilities today.

GCI presents misleading data to support several erroneous claims about the limits of its capabilities. First, GCI reports that it can economically serve [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its current retail customers over its own facilities.⁹² GCI does not include the number of ACS customers it could serve easily over its own facilities.⁹³ Considering its extensive network, GCI could likely serve [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of ACS’s customers over GCI’s facilities as well.⁹⁴ Therefore, GCI’s statistics significantly underestimate the competitive potential of its network.

Second, GCI presents skewed and inaccurate retail line numbers. GCI includes the lines ACS resells to AT&T-Alascom and TelAlaska when calculating ACS’s share of switched lines.⁹⁵ When measuring non-switched DS-1 circuits, GCI includes retail DS-1 circuits

⁹¹ Shelanski Reply Statement at ¶ 21; Blessing Reply Statement at ¶ 3.

⁹² Zarakas Decl. at Exhibit I.

⁹³ Blessing Reply Statement at ¶ 5.

⁹⁴ Blessing Reply Statement at ¶ 5.

⁹⁵ Meade Reply Statement ¶ 8.

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and voice-grade equivalents in ACS's line count, but does not do so for the GCI line count.⁹⁶

GCI presents access line counts in the East wire center that omit its access lines in the Elmendorf facilities.⁹⁷ Thus, GCI presents a skewed image of its present capabilities of serving customers in the Anchorage study area over its own facilities.

Third, GCI claims that "more than 80% of the switched service lines in service in Anchorage employ loops supplied by ACS."⁹⁸ This figure obviously includes ACS's customers as well, and therefore is misleading. This number, which GCI repeatedly uses in its comments,⁹⁹ conveys an inflated impression of how many customers GCI cannot serve without access to ACS facilities.¹⁰⁰ GCI fails to provide the significant figure of how many customers currently served on ACS's network it *could* serve on its own.¹⁰¹ It is irrelevant how many customers GCI has decided, with the reduced UNE rate, it is more economical to serve over ACS's facilities.¹⁰² The figure GCI should have supplied is how many customers it could access with its own, nearly completed network: at most, GCI is dependent on ACS's facilities for less than [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its customers today, taking account only of the

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Sappington Decl. at ¶ 76.

⁹⁹ *E.g.*, Sappington Decl. at ¶ 76; Zarakas Decl. at ¶ 4.

¹⁰⁰ Shelanski Reply Statement at ¶¶ 12-13.

¹⁰¹ *Id.* at ¶ 13.

¹⁰² *Id.*

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build-out GCI's own expert has said is economically feasible and disregarding other competitors' facilities in the Anchorage market.¹⁰³

In particular, GCI's analysis demonstrates that it is capable of serving almost [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its current enterprise customers wholly on its own facilities.¹⁰⁴ Again, these figures are based on GCI's own projections of economic facilities construction, projections that ACS cannot fully evaluate because GCI has supplied neither the data nor method details underlying Mr. Zarakas's calculations.¹⁰⁵ However, it is evident that Mr. Zarakas overstates the number of customers GCI is "economically impaired" from serving.¹⁰⁶ A more complete analysis of GCI's ability to serve its customers without UNEs, taking into account Anchorage's additional cable companies and fixed wireless providers, would reveal that GCI's overall dependence on ACS's facilities is likely to be far less than [BEGIN CONFIDENTIAL][END CONFIDENTIAL].¹⁰⁷ The projections of GCI's expert, while in themselves are enough to defeat any notion of impairment for GCI, are far more modest than the projections GCI itself has repeatedly and publicly made for transitioning its customers entirely onto its own network.

¹⁰³ *Id.* at ¶ 14 (citing GCI's calculation that it would be economically feasible to serve all but [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its customers on its own facilities without UNEs); Zarakas Decl. at Exhibit I.

¹⁰⁴ Blessing Reply Statement at ¶ 5.

¹⁰⁵ Shelanski Reply Statement at ¶ 21; Blessing Reply Statement at ¶ 3.

¹⁰⁶ Shelanski Reply Statement at ¶ 19 (discussing the fact that Mr. Zarakas incorrectly considers GCI competitively impaired from serving customers who simply refused to allow GCI to complete upgrades on their premises).

¹⁰⁷ *Id.* at ¶ 16.

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3. Alternative Intermodal Networks Exist in Anchorage and Are Capable of Serving Mass Market and Enterprise Customers.

GCI is wrong when it asserts that ACS has the only facilities over which local voice services can be offered in Anchorage.¹⁰⁸ The Commission has acknowledged that all services that compete as substitutes for wireline telecommunications increase the level of competition for purposes of forbearance analysis.¹⁰⁹ Several Commission orders issued since ACS filed its Petition support consideration of intermodal competition.¹¹⁰ For example, in the *Verizon Merger Order*, the Commission found that intermodal services were substitutions for local services, long-distance services, and bundled local and long-distance services.¹¹¹ The presence of these additional competitors disproves the argument made by some commenters that additional facilities-based entry into the Anchorage market is not feasible.¹¹²

¹⁰⁸ GCI Opposition at 12 & n.30.

¹⁰⁹ *Qwest Order* at ¶ 65 (stating that it is inappropriate to “focus exclusive only competition provide using ‘identical technology that is currently deployed by the incumbent LECs’” (quoting Qwest Reply at 6)).

¹¹⁰ *In the Matter of Verizon Communications Inc. and MCI Inc., Application for Approval of Transfer of Control*, FCC 05-184. Memorandum and Order, at ¶¶ 84-97 (2005) (“*Verizon Merger Order*”); *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer and Control*, FCC 05-183, Memorandum Opinion and Order, at ¶¶ 85-90 (2005) (finding that VoIP and mobile wireless service were substitutes for wireline local service); *see also Sprint-Nextel Order* at ¶ 141 (addressing “the nascent competition between wireless and wireline services for local telephony services provided to mass market consumers”); *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 428 (D.C. Cir. 2002) (holding that the Commission must consider intermodal competition in the context of UNEs); *Qwest Order* at ¶ 65 (taking account of intermodal facilities in the UNE context) (footnote omitted).

¹¹¹ *Verizon Merger Order* at ¶¶ 84-97.

¹¹² *See* Comments of CompTel, *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 7 (“CompTel Comments”); Covad Comments at 29-30.

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A variety of existing alternative networks over which local voice services can be offered to customers in Anchorage provide additional competition for ACS's wireline services and for GCI's telephony offerings. Voice-over-Internet-Protocol ("VoIP") provided over broadband, fixed and mobile wireless voice and broadband services, is an effective substitute for ACS's local exchange service.¹¹³ The prices for these services impose competitive pressures on ACS's pricing decisions for its exchange access offerings.¹¹⁴

Any customer with access to a high-speed Internet connection can purchase voice telephony service from any of a large array of VoIP providers. Vonage and AT&T Callvantage Communications both market VoIP services specifically in Anchorage.¹¹⁵ Although Vonage and other VoIP providers do not currently offer local numbers in Anchorage, they could easily do so by contracting with a facilities-based competitor such as GCI.¹¹⁶ Thus, GCI's assertion that ACS's loops are bottleneck facilities is unsupported by the marketplace realities.¹¹⁷ Even if GCI were to cease expanding its circuit-switched telephony network, GCI provides cable modem service over its cable facilities, which GCI estimated would pass 98% of homes in Anchorage.¹¹⁸ Moreover, GCI's cable modem service is not the only high-speed Internet access alternative in Anchorage. The areas not able to receive GCI's cable modem service today are served by

¹¹³ Jackson Statement at ¶¶ 23, 25.

¹¹⁴ Eisenberg Statement at ¶ 9.

¹¹⁵ *Id.*

¹¹⁶ Jackson Statement at ¶ 23.

¹¹⁷ GCI Opposition at 43. Although the Commission in Verizon declined to consider broadband a substitute for local service because of the larger fee to obtain broadband service, this economic argument is no longer correct. Broadband service is available through several providers in Anchorage, such as GCI, and is priced competitively to wireline phone service. *See* Eisenberg Statement at ¶ 9.

¹¹⁸ Meade Reply Statement at ¶ 2 (citing GCI Opposition at 36 n.146).

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Eyecom for cable service. Although Eyecom does not offer cable broadband service today, the technology is available in the market, and there is no reason to believe it could not offer broadband service.¹¹⁹ In addition, both Clearwire and AT&T Alascom have deployed fixed wireless broadband networks covering a large part of Anchorage, each capable of providing broadband service to mass market and enterprise customers.¹²⁰

The record demonstrates competition among CMRS providers in the Anchorage study area, including facilities-based provider Dobson Cellular (whose service GCI resells).¹²¹ Recent FCC data demonstrates that wireless service can be a substitute for both local and long distance service.¹²² The Commission has found that “consumers appear increasingly to choose wireless service over traditional wireline service”¹²³ Therefore, ACS’s wireline network is not now, nor will it be in the future, necessary for the provision of traditional or advanced local exchange services in Anchorage.

In light of the presence of multiple intra- and intermodal networks in the Anchorage market, ACS urges the Commission to consider the existence of *all* facilities alternatives in its forbearance analysis, just as it did in *Qwest*, and in the *Verizon*, *SBC* and *Sprint Merger Orders*.

¹¹⁹ Sprain Statement at ¶ 4.

¹²⁰ Jackson Statement at ¶ 24 (citing Clearwire map); Eisenberg Statement at ¶ 10.

¹²¹ Petition at 5. In addition to being a wireless reseller of Dobson’s service, GCI is a majority owner in Alaska Digital, another wireless carrier serving Alaska. Eisenberg Statement at ¶ 10.

¹²² Shelanski Reply Statement at ¶ 20 (stating that the FCC has found 62% of all Americans, and over 90% of those between 20 and 49 years old, own cell phones).

¹²³ *Id.* (quoting FCC, *Trends in Telephone Service*, at ¶ 197 (rel. June 21, 2005), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf).

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4. Forbearance Analysis Must Consider the Customers Who Can Be Served Via Competitive Facilities in a Commercially Reasonable Time Frame.

As GCI argues, forbearance analysis must be forward-looking.¹²⁴ Thus, the Commission should consider not only the competitive facilities currently available in the market, but also the customer base that can be served in the near future through facilities planned to be deployed in the coming months, or that could be deployed within a commercially reasonable time frame, upon demand. For example, the Commission should determine where GCI has deployed voice-enabled facilities – including cable, fiber, wireless local loops (“WLL”), point-to-point microwave, and copper-based facilities – or could provide facilities-based local exchange service within a commercially reasonable period. As discussed above, the Commission also should consider the present availability and expansion capabilities of other competitive alternatives that do not depend upon ACS UNEs, such as VoIP over GCI broadband, Clearwire wireless broadband service, and Dobson/CellOne cellular service, among others.

GCI has not offered persuasive evidence to refute that the extent of its network justifies forbearance. The fact that GCI’s cable plant and last-mile facilities do not reach every customer in the market today is not sufficient justification to continue mandatory unbundling. The Commission has made clear that a competitor’s network need not cover 100% of the end-user locations in a wire center before forbearance is warranted.¹²⁵ As the D.C. Circuit has

¹²⁴ GCI Opposition at 43-44.

¹²⁵ See, e.g., *Qwest Order* at ¶¶ 69-70, 71 (Commission has rejected arguments that fully competitive wholesale market is a mandatory precursor to a finding that Section 10(a)(1) is satisfied).

Other competitors submitting comments in this proceeding also mistakenly argue that ACS must meet the non-impairment test for larger markets. See, e.g., Opposition of Time Warner Telecom, Conversent Communications CBeyond Communications and CTC Communications, *In the Matter of*

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articulated, the obligation to provide UNEs at regulated prices is a limited one, not merely determined by the convenience of the requesting CLEC, but constrained by the circumstances of the market.¹²⁶ Therefore, the Commission should consider whether it is possible for GCI to provide local exchange services over its own facilities in a reasonable timeframe.

a. GCI's economic feasibility analysis does not accurately assess GCI's ability to serve its customers over its own facilities within the near future.

In his declaration, Mr. Zarakas offers a model of the "economic feasibility" of upgrading its current or building additional facilities. Because Mr. Zarakas does not describe the methodology or assumptions used in his study, it merits little consideration by the Commission.¹²⁷ ACS's expert, David Blessing, has identified several basic flaws in Mr. Zarakas' model:

- The model provides forward-looking net present value analysis without adjusting for the fact that the retail prices and demand level will certainly vary during the model's fifteen-year period.¹²⁸

Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket No. 05-281, at 5-8 ("Time Warner Comments"). The Commission has recognized that ILECs in smaller markets may be unable to demonstrate impairment in accordance with these tests. TRRO at ¶ 39. Further, meeting the non-impairment tests is not a precondition to forbearance under Section 10 of the Act. *Qwest Order* at ¶ 63 n.164.

¹²⁶ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 563 (D.C. Cir. 2004) ("*USTA II*").

¹²⁷ Shelanski Reply Statement at ¶ 21; Blessing Reply Statement at ¶ 3.

¹²⁸ Blessing Reply Statement at ¶ 7.a.

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- Mr. Zarakas does not consider any investment risk on the part of GCI, but looks solely at whether customers can be economically served using the demand, technology and market prices in place today.¹²⁹
- The model understates net cash-flow because it only considers local revenues and universal support, excluding toll revenues interstate access and long distance revenues, and revenues from bundled services.¹³⁰
- The model's incremental rather than aggregate approach to measuring the net present value does not demonstrate whether GCI would be profitable in serving all of its customers on its own facilities.¹³¹ The nature of the local exchange service business requires providing service to some areas below cost but averaging rates throughout the study area to recover costs overall.¹³² As with its proposed market definitions, GCI artificially parses the relevant analysis to present a distorted picture of itself as impaired in certain areas.

Furthermore, Mr. Zarakas confuses GCI's inability to persuade certain customers to allow GCI to enter their premises to perform service upgrades with a condition that makes serving these customers uneconomic.¹³³ As Dr. Shelanski notes, "there is a different between

¹²⁹ *Id.* at ¶ 7.d.

¹³⁰ *Id.* at ¶ 7.b (also explaining that GCI fails to explain how its current customers who purchase service bundles are allocated among telephone, cable, wireless, and long-distance services).

¹³¹ *Id.* at ¶ 7.c.

¹³² Meade Reply Statement at ¶ 9.

¹³³ *See* Shelanski Reply Statement at ¶ 19 (citing Zarakas Decl. at ¶¶ 32, 36).

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being competitively impaired and being competitively unsuccessful.”¹³⁴ Mr. Zarakas’s unrealistic assumptions regarding this population further skews his economic feasibility analysis.

GCI admits that its strategy is to enter markets and “quickly generate return by serving the greatest number of customers as possible.”¹³⁵ GCI can serve a larger number of customers by relying on ACS’s network where it exists and spending its capital to extend its own network to reach areas that ACS has not accessed. According to GCI, because it is “uneconomic” to have completed its own network, ACS must continue to provide GCI access to its own facilities.¹³⁶ But the ILEC is not be used as a crutch (or even a “piñata”) for the convenience of CLECs or regulators.¹³⁷

GCI also argues that is not “economically feasible” to complete its network any faster.¹³⁸ However, as described in Mr. Jackson’s analysis, GCI overstates the effort and expense required to complete its cable telephony deployment.¹³⁹ For instance, one-time changes at the cable headend to enable cable telephony need not be replicated. Once these steps have been completed, the system can support tens or hundreds of thousands of customers.¹⁴⁰ Additionally, node splitting and expansions increase capacity available for GCI’s cable broadband modems.¹⁴¹ Thus, these costs are not entirely allocable to the cost of cable telephony deployment. Further, in

¹³⁴ *See id.*

¹³⁵ Borland Decl. at ¶ 7.

¹³⁶ *See, e.g.,* GCI Opposition at 30.

¹³⁷ *USTA II*, 359 F.3d at 573 (“In competitive markets, an ILEC can’t be used as a piñata.”).

¹³⁸ Zarakas Decl. ¶ 33.

¹³⁹ Jackson Statement at ¶¶ 18-22.

¹⁴⁰ *Id.* at ¶ 20.

¹⁴¹ *Id.* at ¶ 21.

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its Opposition, GCI describes the evolution of its cable telephony platform and indicates that it is “considering use of customer-powered, rather than network-powered, network design and CPE.”¹⁴² GCI then proceeds to describe a myriad of problems it encounters in expanding its cable telephony network based on a network-powered technology.¹⁴³ GCI recently demonstrated to ACS that it has begun field testing customer-powered equipment.¹⁴⁴ Many of the construction delays that GCI cites in its pleading (*e.g.*, node power supply construction, site-by-site upgrades of taps) are expected to be resolved as GCI converts to this new technology.¹⁴⁵

GCI does not contradict the statements of its officers implying that GCI expects to transition its customers off ACS facilities entirely by year-end 2007.¹⁴⁶ Instead, GCI makes the self-evident declaration that its decisions about where to deploy its own facilities are dependent on the expected success of such investments.¹⁴⁷ GCI complains that its capital resources are constrained, inhibiting a faster transition from UNEs to self-provisioning.¹⁴⁸ Yet GCI is currently upgrading its cable network to offer telephony in rural areas outside of Anchorage,

¹⁴² GCI Opposition at 23 n.82 (emphasis added).

¹⁴³ *Id.* at 24-27.

¹⁴⁴ Meade Reply Statement at ¶ 6.

¹⁴⁵ *Id.*; Jackson Statement at ¶ 21.

¹⁴⁶ Petition at 14 (citing GCI Q4 2004 Earnings Call Transcript at 3 (Feb. 24, 2005)). Instead, GCI relies on such unpersuasive reasoning as the fact that it is not possible to extend fiber to customers within the [BEGIN CONFIDENTIAL][END CONFIDENTIAL] period they will wait for service. In fact, only [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of ACS’s 2005 circuit orders were processed within this timeframe. Sprain Statement at ¶ 9.

¹⁴⁷ Borland Decl. at ¶ 7.

¹⁴⁸ Declaration of Gary Haynes, *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at ¶ 16, attached thereto as Exhibit H (“Haynes Decl.”).

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where UNEs are unavailable due to the rural exemption in Section 251(f) of the Act.¹⁴⁹ This is powerful evidence that GCI made a business decision to invest in those facilities instead of spending this capital to complete its facilities in Anchorage, simply because it has the ability to continue to purchase UNEs at attractive prices in Anchorage.¹⁵⁰ As Dr. Shelanski explains, GCI's business decision not to deploy more facilities in Anchorage does not render GCI impaired without access to UNEs there.¹⁵¹

b. Technological solutions exist that would allow GCI to serve customers over its own facilities.

For instance, GCI has represented to the RCA that it is capable of serving customers through the use of wireless local loops ("WLLs") and high-capacity point-to-point microwave technology. GCI has stated to the RCA that it has been serving customers in Anchorage using WLL technology since the beginning of 2001,¹⁵² and ACS has observed GCI's WLL equipment installed on the premises of residential and businesses in a number of locations in the Anchorage study area.¹⁵³ This evidence directly contradicts the testimony of Gina Borland

¹⁴⁹ *MTA Order* at 47; *In the Matter of the Application by GCI Communication Corp. for an Amendment to its Certificate of Public Convenience and Necessity to Operate As a Competitive Local Exchange Telecommunications Carrier*, U-05-004 (filed Jan. 21, 2005) (GCI application to RCA to serve 11 study areas: ACS-N (Glacier State), ACS-N (Sitka), Bethel, Cordova Tel, Copper Valley Tel, Ketchikan, Matanuska Tel Assn., Nome, Petersburg, Public Utilities, Seward, and Wrangell).

¹⁵⁰ The RCA concluded that denying GCI access to UNEs would stimulate facilities investment in the Matanuska market, specifically rejecting GCI's argument that it had adequate incentives to expand its own network even if UNEs were available. *MTA Order* at 47. *See also*, Haynes Decl. at ¶ 16 (indicating that GCI's deployment of DLPS service in Fairbanks and Juneau "limits available capital, not to mention labor and supplies.").

¹⁵¹ Shelanski Reply Statement at ¶ 13.

¹⁵² GCI, Letter to RCA re: Docket U-05-4, at 3 (Mar. 22, 2005) (attached to Jackson Statement at Exhibit E-6); GCI, Letter to RCA re: Docket U-05-4, at 2 (Aug. 23, 2005) (attached to Jackson Statement as Exhibit E-7).

¹⁵³ Poor Statement at ¶ 4, Exhibit B-1.

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offered by GCI, that “any wireless solution would leave GCI out of the market entirely until it could be designed, built, installed and provisioned.”¹⁵⁴ GCI would not have to start “essentially from square one” as Ms. Borland claims.¹⁵⁵ Rather, it seems that GCI already has extensive facilities employing a wide range of proven technologies.

In its comments, GCI also asserts that its cable plant is not suited to provide DS1 service, and that it would be unable to serve the needs of business customers requiring DS1 capacity without access to ACS’s UNEs.¹⁵⁶ Either GCI is guilty of false modesty or it is uninformed. In fact, affordable technology exists today that permits a cable system operator to offer DS1-capacity to enterprise customers using its current coaxial cable system infrastructure and DOCSIS technology of the type GCI employs.¹⁵⁷ Such technology is proven effective and is accepted by the cable industry as a viable solution for enterprise customers.¹⁵⁸ Based on its channel capacity, GCI may even have sufficient capacity on its cable network to implement such technology without expensive network capacity upgrades.¹⁵⁹

In addition to applying existing technology to its current DOCSIS system, ACS tariffed offerings give GCI and other competitors another commercially viable alternative for providing DS-1 capacity to enterprise customers. The Commission should consider the

¹⁵⁴ Borland Decl. at ¶ 48.

¹⁵⁵ *Id.* Before such statements are given weight, the Commission should require GCI to provide more detailed information on its use of WLL and the locations where it can deploy such technology.

¹⁵⁶ GCI Opposition at 18-19; Haynes Decl. at ¶¶ 20-22.

¹⁵⁷ *See* Jackson Statement at ¶¶ 13-14.

¹⁵⁸ *Id.* at ¶¶ 15, 16.

¹⁵⁹ *Id.* at ¶16.

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availability of a tariffed alternative that is currently used by GCI as evidence that the market rates for T-1 service do not impede competition.¹⁶⁰ Even if UNEs are no longer available, a competitive carrier may provision T-1 service by purchasing service from ACS's intrastate access Metallic Service tariff for \$29 per month for a single line.¹⁶¹ GCI's retail price for high-capacity service on a private line is \$89.24.¹⁶² Although a pair of Metallic Service lines are required to provide high capacity service, at a cost of \$58, GCI still has a substantial profit margin opportunity with this method of provisioning.¹⁶³ Thus, there is no credible argument that a competitor would be impaired serving enterprise customers using this alternative. As discussed below, the RCA closely examines tariff rate increases, even for competitive services, which provides an adequate deterrent to drastic rate increases for ACS's T-1 service.¹⁶⁴

For all of the reasons discussed above, GCI is more than capable of providing service to mass market and enterprise customers throughout the Anchorage study area using current network technologies, without costly upgrades. The Commission should not lend credence to GCI's claims that it must rely on ACS UNEs to serve its customers. GCI merely chooses not to employ existing technology that may be somewhat more expensive than taking

¹⁶⁰ See *USTA II*, 359 F.3d at 576 (finding that where "market evidence already demonstrates that existing rates outside the compulsion of § 251(c)(3) don't impede competition, and where . . . there is no claim that ILECs would be able drastically to hike those rates," possible complications of considering tariffed alternatives "recede even farther in the background."); *Qwest Order* at ¶ 67 n. 177 (finding that the Commission's rejection of ILEC tariffed wholesale offerings in its analysis of nationwide impairment findings does not prohibit consideration of tariffed alternatives in forbearance analysis).

¹⁶¹ Sprain Statement at ¶ 8, Exhibit A-2.

¹⁶² *Id.* at ¶ 8, Exhibit A-2.

¹⁶³ *Id.* at ¶ 8 ("GCI could also provide DS-1 capacity using HDSL on a single Metallic Service pair at an even higher profit margin.").

¹⁶⁴ See *infra* Part III.C.

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advantage of the regulated UNE rate. GCI has had the luxury of deciding whether or not to deploy facilities based on the profitability of serving particular customers over its own plant versus using ACS UNE loops.¹⁶⁵ However, GCI should not be entitled to indefinite access to UNEs just because a UNE strategy may be more profitable or convenient than building out facilities in certain high-cost portions of a market.¹⁶⁶ Continued availability of UNE loops provides GCI with the ability to avoid losses on its capital investments at the expense of ACS.

It is not plausible that GCI or other competitors would not be able to compete with ACS without access to UNEs, given the extensive facilities deployment that already has occurred in Anchorage. For the Commission to give any weight to these arguments, it must examine maps showing the location of current and planned fiber, cable telephony, copper and WLL facilities in relation to customer locations, and consider the costs associated with extending these facilities to serve local exchange customers they do not currently reach. No competitor to date has submitted such evidence.

c. GCI has not demonstrated that it cannot reach customers that are not “near” its existing facilities.

GCI argues that its cable facilities are not “near” many customer locations, however, these arguments are contradicted by Mr. Zarakas’ analysis, which concludes that almost all residential customers and a substantial number of enterprise customers are located “near” cable facilities.¹⁶⁷ Further, GCI does not define the distance at which locations are

¹⁶⁵ Borland Decl. at ¶ 7.

¹⁶⁶ See Blessing Reply Statement at ¶ 7.e.

¹⁶⁷ See Zarakas at Exhibits V, VI.

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uneconomical to serve over its own facilities.¹⁶⁸ ACS's experience and standard cable industry practice suggest that GCI could extend its facilities to most of its customers at relatively low cost due to the short distances that likely exist between GCI's existing facilities and almost all residential and many enterprise customer locations. Many smaller businesses are located in or adjacent to residential areas, and thus could easily be served from GCI's cable network.¹⁶⁹ As discussed in Mr. Jackson's statement, GCI can easily reach premises within 400 feet of its feeder plant, and can reach premises with 1,400 feet with reasonably little added effort.¹⁷⁰ ACS's line extension tariff provides for construction of lines up to half a mile from the closest network connection without charge to the customer.¹⁷¹ There is no way to determine from GCI's comments whether GCI's estimation of which customers are "near" cable facilities is reasonable. Nonetheless, Mr. Zarakas's analysis indicates that a significant number of business locations are near cable facilities.¹⁷² This conclusion is illustrated by a comparison of GCI's map of cable system boundaries and ACS's study area map, which shows the development and densely populated areas of Anchorage.¹⁷³

Looking at the range of technologies available to GCI also is informative. As discussed by Mr. Jackson, technology exists today which could enable GCI to use its DOCSIS

¹⁶⁸ GCI Opposition at 15, n. 41; Zarakas Decl. at ¶¶ 5, 8, Exhibit V.

¹⁶⁹ Sprain Statement at ¶ 4; *see supra* Part III.A.4.b; Jackson Statement at ¶¶ 13-17.

¹⁷⁰ Jackson Statement at ¶ 7.

¹⁷¹ Sprain Statement at Exhibit A-2.

¹⁷² Zarakas Decl. at Exhibit VI.

¹⁷³ *Compare* GCI Opposition at Exhibits E, F *with* Sprain Statement at Exhibit A-1.

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cable system to provide DS1 services to enterprise customers.¹⁷⁴ While some large business locations may not be near cable facilities, ACS believes many of these locations are passed by GCI's fiber facilities.¹⁷⁵ Indeed, GCI's map illustrating its fiber facilities appears to show that it has significant fiber facilities in the in the densely populated North and Central wire centers where business locations are prevalent.¹⁷⁶ Thus, GCI's analysis, which appears to be based only on distances to its coaxial cable facilities, does not tell the whole story. GCI's WLL and high-capacity point-to-point microwave facilities, allowing it to access customers beyond the reach of its wireline facilities, make GCI's impairment argument even less credible.¹⁷⁷

Substantially all of the enterprise customers and mass market customers alike appear to be accessible from GCI's facilities. GCI has not refuted the compelling evidence demonstrating that there is currently extensive facilities-based competition, in both the mass and enterprise markets, which will increase in a commercially reasonable amount of time. The Commission should not accept assertions of limited facilities-based competition without verifying the customer and facility locations that GCI uses as the basis for its economic feasibility analysis.

¹⁷⁴ Jackson Statement at ¶¶ 13-14.

¹⁷⁵ Sprain Statement at ¶ 4.

¹⁷⁶ See Brown Decl. at Exhibit BB1. GCI's maps are difficult to read, and ACS is unable to determine the location of all of GCI's fiber facilities.

¹⁷⁷ Jackson Statement at ¶¶ 5-10. GCI has 12 active common carrier fixed microwave licenses in Anchorage, constituting three separate networks. *Id.* at ¶ 10. This equipment allows GCI to reach customer locations beyond the physical reach of its fiber or cable. *Id.* at ¶ 7.

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B. ACS Will Continue to Offer Retail and Wholesale Services at Just, Reasonable, and Non-Discriminatory Rates.

1. Competition Ensures that All Consumers In the Anchorage Market Enjoy Prices Disciplined By the Market.

Stiff competition from a growing number of intermodal providers exerts significant pressure on ACS to maintain retail rates that are just, reasonable and nondiscriminatory. Even after a grant of forbearance from UNEs, this competition will remain strong. Concerns GCI raises about the small percentage of customers in the market that are not reached by GCI's network are negated by marketplace realities. ACS does not and cannot charge different rates to customers in the same market. Thus, ACS would not charge customers in Anchorage whom GCI finds it to be uneconomical to serve a different rate than it charges other customers.¹⁷⁸ ACS prices its services, both stand-alone and bundled, uniformly across the entire market. Therefore, all customers in all parts of the market receive the benefit of retail pricing disciplined by competitive pressures, even if competitors do not serve them all.

2. ACS Has Strong Incentives to Negotiate Reasonable UNE Terms.

Commercial negotiations will result in a reasonable and fair UNE price. As previously discussed, GCI has the capability to complete its network in the near future. Intermodal competitors also provide network alternatives to ACS's facilities. In order to continue to receive the revenue from leasing ACS's facilities, ACS must offer UNEs at reasonable prices or GCI will find constructing alternative facilities more attractive than

¹⁷⁸ Eisenberg Statement at ¶ 3. GCI's claims regarding ACS's pricing in markets not served by GCI are irrelevant to the Commission's analysis in Anchorage. See Declaration of Dana Tindall, *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at ¶ 17, attached thereto as Exhibit B.

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remaining on ACS's network. Further, as ACS has explained, GCI has facilities to which ACS wants access.¹⁷⁹ Allowing the companies to negotiate without regulatory intervention may produce greater competition for customers GCI controls today.¹⁸⁰

The Fairbanks and Juneau agreement between ACS and GCI provides evidence of successful UNE pricing without FCC regulation. GCI entirely mischaracterizes the voluntary negotiations that ACS initiated.¹⁸¹ GCI was willing to negotiate only after the Alaska Supreme Court issued a decision finding that the RCA should reexamine whether ACS's rural exemption should be reinstated.¹⁸²

GCI also mischaracterizes the UNE provisioning process between the two companies.¹⁸³ ACS repeatedly offered to enter into an automated provisioning arrangement with GCI. Following a period of lengthy and costly litigation and negotiations, GCI determined that it was not in its best interest for it to spend the money necessary to implement this system.¹⁸⁴ While GCI may have decided not to expend this capital because it is moving off of UNEs or for another reason, it is clear that ACS negotiated in good faith to resolve the issue.

¹⁷⁹ Meade Reply Statement at ¶ 10.

¹⁸⁰ Shelanski Statement at ¶¶ 17-18.

¹⁸¹ GCI Opposition at 39-41.

¹⁸² Meade Reply Statement at ¶ 11 (citing *ACS of Alaska, Inc. v. Regulatory Comm'n of Alaska*, 81 P.3d 292 (Alaska 2003)). GCI also claims that it attempted to negotiate Anchorage UNE rates during this same period. GCI Opposition at 41. Discussions in this timeframe would have been moot because the arbitration proceeding referenced by GCI had already occurred. *Id.* at ¶ 12.

¹⁸³ Borland Decl. at ¶¶ 13, 14.

¹⁸⁴ Meade Reply Statement at ¶ 13.

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3. ACS Remains Bound By Federal and State Regulation That Ensure Just and Reasonable Pricing.

Even if ACS were not economically motivated to do so, regulatory provisions that will remain in force will ensure ACS retail services will be offered at just and reasonable prices if forbearance is granted. First, ACS's pricing of interstate services, including special access and switched access offerings to carriers such as GCI and AT&T, as well as advanced services offered to retail customers, still will be regulated by Sections 201 and 202 of the Act. The Commission has recognized that such provisions allow the FCC to prohibit "unreasonable discrimination among customers and rates that are unjust and unreasonable."¹⁸⁵

Second, at the wholesale level, competitors enjoy many protections not affected by ACS's Petition. ACS's petition is limited to network unbundling obligations. ACS is not seeking forbearance from other Section 251 provisions, or other sections of the Act and the FCC's rules that, *inter alia*, compel ACS to permit interconnection and collocation by competitors, permit resellers to purchase ACS services at a discount, govern access to inside wiring, and require ACS to provide access to poles, ducts, conduits and rights-of way.¹⁸⁶ These and many other provisions of the Act and the Commission's rules facilitate competitive entry and ensure against discrimination by ACS.¹⁸⁷ Therefore, even with the requested forbearance, ACS would continue to be obligated to deal fairly with resellers and facilities-based competitors, and could not exclude them from the market.

¹⁸⁵ *In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, FCC 99-108, 14 FCC Rcd 10840, at ¶ 10 (1999).

¹⁸⁶ *See, e.g.*, 47 U.S.C. §§ 224, 251(a), (b), (c)(1), (c)(2), (c)(4), (c)(5) & (c)(6), and 47 C.F.R. §§ 68.105, 68.106.

¹⁸⁷ *Qwest Order* at ¶ 67.

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Third, ACS must maintain just and reasonable rates for intrastate services under state regulation. The RCA's recent rule enactment has resulted in declaring ACS a non-dominant carrier for retail local services.¹⁸⁸ However, this does not significantly alter the RCA's ultimate authority over ACS' rates. The only aspect of the historical regulatory regime that will change is that new or revised retail tariff offers will be introduced to the market almost immediately. Current statutory standards, such as the requirement for "just and reasonable rates," and prohibitions against "unreasonable preferences," will continue to apply to ACS' rates, terms, and practices. The RCA will continue to have jurisdiction to suspend ACS' rates, conduct investigations, and order refunds. Upon concluding a formal docket, the RCA can modify ACS' rates and other terms, or require ACS to withdraw them. Furthermore, a large group of intrastate retail services are excepted from these new state regulations. For example, special access services, among the most competitive services in the Anchorage market, are not at all affected by the new regulations and remain subject to dominant carrier rules. Therefore, there are certain services for which ACS will continue to be treated as dominant.¹⁸⁹

For all of the reasons cited above, ACS's retail prices must continue to be just and reasonable, even in the absence of unbundling obligations for the benefit of competitors.

¹⁸⁸ R-03-3, Order No. 16 issued by the Regulatory Commission of Alaska on August 5, 2005 and U-05-55, Order No. 3 issued by the Regulatory Commission of Alaska on February 22, 2006.

¹⁸⁹ Eisenberg Statement at ¶ 4.

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4. Because ACS Is Not a BOC, It Is Irrelevant that ACS Is Not Bound By Section 271 Obligations.

Some commenters argue that without the Section 271 requirements of the kind applicable to Qwest in Omaha, ACS will not offer access to retail services at reasonable rates.¹⁹⁰ As discussed above, ACS's retail rates are sufficiently constrained by both market forces and regulatory oversight. Continued unbundling is not necessary either to constrain retail rates or to promote competitive entry in Anchorage. In addition, Section 271 is wholly irrelevant because ACS is not, and never was, a BOC or a BOC affiliate, successor, or assign.¹⁹¹ ACS does not pose any threat to long-distance competition which the Section 271 obligations aim to prevent.¹⁹² Because ACS never had the ability to hinder long-distance competition, there is no reason for ACS, even after forbearance, to be subject to Section 271-type requirements.

The CLECs also overestimate the significance of the Commission's denial of Qwest's request for forbearance from Section 271. While the Commission did not relieve Qwest from all of its Section 271 obligations, the Commission granted forbearance from the most significant subsection: checklist item 2.¹⁹³ Checklist item 2 "incorporates and is coextensive with section 251(c)(3)."¹⁹⁴ It is inconsequential to ACS's narrow UNE pricing relief request that

¹⁹⁰ See GCI Opposition at 68-69; CompTel Comments at 12-14.

¹⁹¹ See 47 U.S.C. §153(4) (definition of BOC).

¹⁹² See *SBC Comm'cs Inc. v. FCC*, 138 F.3d 410, 412-413 (D.C. Cir. 1998); *BellSouth Corp. v. FCC*, 144 F.3d 58, 65-66, 70 (D.C. Cir. 1998). As a former FCC Chairman told Congress, such restrictions were needed because, in the absence of such provisions, BOCs "would be following the natural instincts of rational businessmen" in using their monopoly power to defeat competition. Telecommunications Policy Act (Part I): Hearings Before the Subcomm. on Telecomm. & Fin. of the House Comm. on Energy and Commerce, 101st Cong., 2d Sess. 426 (1990) (testimony of Richard E. Wiley).

¹⁹³ *Qwest Order* at 48 ¶ 96.

¹⁹⁴ *Id.*

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the Commission retained Section 271's regulation of access to Qwest's facilities.¹⁹⁵ The Commission made clear that relief from Section 251(c)(3) and the corresponding pricing restrictions were justified in Omaha. ACS is likewise entitled to relief from regulation associated with the obligations established in Section 251(c)(3) of the Act.

C. Unbundling Obligations Are Not Necessary To Protect Consumers.

Just as market forces and a vigilant state regulatory commission will adequately protect against unjust and unreasonable rates and practices, the theoretical harm to consumers that some commenters predict will not materialize if unbundling relief is granted in Anchorage. Consumers will continue to receive a choice of telecommunication services and competitive rates in the Anchorage study area without Section 251(c)(3) UNE obligations. As described above, those choices will continue to exist whether or not GCI's telephony-ready network ultimately extends to the rest of Anchorage.

Forbearance from unbundling obligations actually could increase the competitive choices available to many customers. Currently, GCI has facilities in various parts of Anchorage not accessible by ACS.¹⁹⁶ Once the bargaining power of the two competitors is equalized, GCI may have an incentive to provide ACS access to its network on commercially reasonable terms if

¹⁹⁵ *Id.*

¹⁹⁶ Meade Reply Statement at ¶ 2.

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GCI continues to desire access to parts of ACS's network. As a result, those consumers who are now only served by GCI will be reachable by both companies.¹⁹⁷

ACS has demonstrated that it will have every incentive to continue offering UNEs to GCI at market-driven rates, and no ability to prohibitively raise GCI's costs.¹⁹⁸ Relying on improper calculations of GCI's dependence on ACS's UNEs, GCI overstates ACS's ability to raise prices and understates the elasticity of facilities-based competitive supply.¹⁹⁹ Because GCI actually relies on ACS's loop facilities to serve well under **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of its customers, ACS is not a dominant input supplier able to raise prices.²⁰⁰ By additionally taking into account the notions of supply elasticity and ACS's fixed costs in accessing customers, GCI's capability to serve nearly all Anchorage customers ensures that ACS cannot profitably increase prices.²⁰¹

Further, any consumers who may not have immediate access to voice telephone service from GCI will continue to receive competitive services and rates. As previously discussed, ACS faces substantial competition from GCI and other carriers. ACS prices its services and designs its service offerings for the entire market—ACS does not and cannot, legally, offer higher quality or lower priced services to some customers in the market.²⁰²

¹⁹⁷ Customers will benefit from improved ACS service in the form of bundling. Although GCI claims that ACS's predecessor could bundle and simply does not offer any bundles comparable to GCI's, until June 23, 2004, all forms of LEC/non-LEC bundling were prohibited by the RCA.

¹⁹⁸ Shelanski Statement at ¶¶ 11-13.

¹⁹⁹ Shelanski Reply Statement at ¶ 23.

²⁰⁰ *Id.* at ¶ 15.

²⁰¹ *Id.* at ¶ 34.

²⁰² Eisenberg Statement at ¶ 4.

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Therefore, if particular customers temporarily only have access to ACS's services, they will still benefit from this competition elsewhere in the market. Moreover, GCI does not operate the only alternative network in the market. ACS has described both CMRS and broadband alternatives that permit customers a range of facilities-based options, in addition to ACS's regulated services.

In addition to these market forces, consumers will benefit from the vigilance of the RCA, which has continuing jurisdiction over local retail rates. As previously discussed, GCI is misleading when it suggests that the RCA's detariffing order ended rate regulation in Anchorage.²⁰³ ACS must offer uniform retail pricing throughout the Anchorage area, and ACS will continue to be subject to RCA oversight, ensuring its rates will remain just and reasonable and not unreasonably discriminatory throughout the study area.

D. Forbearance Is in the Public Interest Because It Will Promote Market Competition.

As explained in the Petition, consumers are harmed by the unnecessary UNE regulations imposed on ACS. Regardless of whether UNE-based competition benefited the retail market in the past, Anchorage has become a fully competitive market and such regulation now is "excessive."²⁰⁴ In a competitive market, continued mandatory unbundling harms the public interest because it "undermine[s] the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."²⁰⁵

²⁰³ See GCI Opposition at 81.

²⁰⁴ See, e.g., Comments of Verizon on ACS's Petition for Forbearance, 05-281, at 2-3 (asserting that ACS's showing "has far exceeded that necessary to obtain a grant of forbearance).

²⁰⁵ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Fcd 16798 at ¶

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ACS, a recognized nondominant carrier, is unjustly burdened by unbundling when GCI has a greater market share than ACS. Forbearance is necessary to level the playing field and allow ACS and GCI to negotiate for access to each other's network. This will give both carriers an incentive to invest in their networks where market forces drive this decision.²⁰⁶ Not only has GCI's building of its own facilities slowed, but ACS has decreased its capital investment into its copper facilities at least in part due to its continuing obligation to provide UNEs.²⁰⁷

GCI's Opposition demonstrates that it has the ability to complete the transition from ACS's UNEs to its own facilities in Anchorage on an expedited basis. GCI has not denied ACS's citation of GCI's public statements that infer that GCI is transitioning its customers to its DLPS platform at a rate that would allow a complete transition in 18 months.²⁰⁸ Indeed, ACS estimates that as of January 31, 2006, GCI reduced its reliance on UNEs by **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** from November 2005 and by 19% from ACS's estimate in its Petition.²⁰⁹

GCI's argument that it cannot profitably increase its rate of deployment, and does not need financial incentives to do so, is unpersuasive. GCI utilized this same argument when

3 (2003); *see also United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) ("Each unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities").

²⁰⁶ Shelanski Statement at ¶¶ 18, 19.

²⁰⁷ Meade Reply Statement at ¶ 5.

²⁰⁸ Petition at 14.

²⁰⁹ Meade Reply Statement at ¶ 4.

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attempting to retain access to UNE loops in the Matanuska Telephone Association Study Area.²¹⁰

The RCA rejected GCI's reasoning, concluding "that the economic advantages and decreased risks made available to GCI by its access to UNEs at TELRIC rates created a disincentive for GCI to deploy its own facilities."²¹¹

GCI's economic model for Anchorage demonstrates that the company decided it is simply a better business decision to rely on UNEs at TELRIC prices than to finish building out its own network.²¹² Indeed, GCI's analysis supports the finding that some parts of the Anchorage study area are more costly to serve than others, yet ACS UNEs are priced uniformly across the study area, making them a particularly attractive option in the higher-cost parts of the market.²¹³ GCI implies it may never be able to "economically" serve some customers without access to UNEs at regulated prices.²¹⁴ As noted by Gina Borland, GCI receives substantial benefits from using ACS's UNEs,²¹⁵ not least of which is avoiding the costs of deploying its own facilities. As long as GCI has the option of using UNEs, it is unlikely that GCI would voluntarily build out facilities throughout the study area. This absence of investment incentive

²¹⁰ See Comments of Matanuska Telephone Association, Inc., *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 7 ("Matanuska Comments"); *MTA Order* at 14.

²¹¹ Matanuska Comments at 8 (citing *MTA Order* at 14).

²¹² See Blessing Reply Statement at ¶ 7.e.

²¹³ *Id.* at ¶ 7.c.

²¹⁴ GCI Opposition at 19.

²¹⁵ Borland Decl. at ¶ 46 ("GCI loses any universal service for a resale line (as compared to a UNE-loop or self-provisioned line), any access savings (same) where it is also the customer's long distance provider, and the state Network Access Fee ('NAF') and Federal Subscriber Line Charge ('SLC'), which would now be passed through to ACS.").

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does not serve consumers,²¹⁶ any more than does the economic arbitrage that harms ACS every time GCI serves a customer in a part of the study area with above-average costs using ACS UNEs priced based on costs averaged over the entire study area.

GCI cannot reasonably argue in this context that it lacks access to the necessary capital to complete its network in Anchorage. Currently, GCI is deploying facilities in rural areas and outside of Anchorage because UNEs are unavailable there.²¹⁷ In Anchorage, GCI relies on ACS's facilities because unbundling provides GCI with huge competitive advantages. Continuing to apply the UNE obligations in Anchorage allows GCI to shift the risks of deploying cable telephony onto ACS, enabling GCI to expand its presence as Alaska's largest telecommunications provider.²¹⁸ Only when UNE rates are deregulated can GCI realistically be expected to have the necessary motivation to complete deployment of its cable telephony facilities in Anchorage.

Several commenters emphasize the difficulty faced by third parties seeking to enter Anchorage's market.²¹⁹ None of these parties speaks from experience. Moreover, the presence of numerous third-party competitors undermines their argument.²²⁰ ACS stated it would be willing to offer third-party CLECs UNEs at TELRIC rates, if the Commission is

²¹⁶ *TRO* at ¶ 3 (“While unbundling can serve to bring competition to markets faster than it might otherwise develop, we are very aware that excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”); see Meade Reply Statement at ¶ 5.

²¹⁷ 47 U.S.C. § 251(f).

²¹⁸ See, e.g., GCI Issues Second Quarter 2005 Results (Aug. 3, 2005), *available at* <http://www.gci.com/investors/gciq22005.pdf>.

²¹⁹ See CompTel Comments at 7; Covad Comments at 30.

²²⁰ See *supra* Part III.A.3.

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concerned about other CLECs gaining entry into the market through UNEs, and if GCI did the same.²²¹ This is the only reason ACS suggests that GCI should be subject to UNE obligations. It is not, as commenters suggests, a sign that the market is not competitive.²²² Even if ACS's UNEs are deregulated for all providers, ACS's services would be available for resale under Section 251(c)(4) of the Act.

Commenters also argue that forbearance relief will harm the public interest by entrenching a duopoly in Anchorage.²²³ Although there are two dominant providers in Anchorage, other competitors are emerging with a variety of innovative offerings.²²⁴ Any concerns relating to risks of a duopoly should be put to rest by the presence in the Anchorage market for local exchange services of multiple intermodal competitors, including mobile and fixed wireless networks, and VoIP providers using broadband that is widely deployed in the market, as discussed above.²²⁵ Anchorage is a competitive market, and UNE relief will further stimulate competition and investment by both ACS and its competitors. As the Commission found in the Omaha study area, facilities-based competition between two balanced carriers gives additional competitors wholesale access options, thus reducing the risk of a duopoly.²²⁶

²²¹ Petition at 49.

²²² See, e.g., CompTel Comments at 7.

²²³ Comments of Integra Telecom, Inc. in Opposition to the Petition of ACS Anchorage, Inc. for Forbearance, *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(2) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 5; Time Warner Comments at 22; CompTel Comments at 14; Covad Comments at 25-26.

²²⁴ Eisenberg Statement at ¶ 9.

²²⁵ See *supra* Part III.A.3.

²²⁶ *Qwest Order* at ¶ 71 (stating that facilities-based competition between Qwest and Cox and actual and potential competitors relying on wholesale access rights minimize risk of duopoly).

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IV. SECTION 251(C)(3) HAS BEEN FULLY IMPLEMENTED IN ANCHORAGE UNDER ANY STANDARD.

A. Section 251(c) Is Fully Implemented for All Incumbent LECs.

In the *Qwest Order*, the Commission stated that “section 251(c) is ‘fully implemented’ because the Commission has issued rules implementing section 251(c) and those rules have gone into effect.”²²⁷ As the Commission explained, if “implementation” required the Commission to establish a certain level of competition, this analysis would be identical to forbearance analysis.²²⁸ To avoid stripping Section 10(d) of meaning, the Commission correctly concluded this section has a very specific meaning, which has been accomplished.²²⁹

In the *Qwest Order*, the Commission stated that Section 10(d) does not contemplate “permanent” unbundling rules.²³⁰ Instead, the rules promulgated under Section 251(c) are frequently revised in the Commission’s informal and formal evaluation process, as well as court challenges.²³¹ Therefore, it is improper look back to the rules promulgated in the *Triennial Review Order* to ascertain whether Section 251(c) has been fully implemented.

²²⁷ *Id.* at ¶ 53.

²²⁸ *Id.* at ¶ 55.

²²⁹ GCI argues that the D.C. Circuit case *Ass’n of Communications Enterprises v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001) prevents such a reading because the court found that Section 251(c) provisions were not yet fully implemented. GCI Opposition at 57 n.216. The Commission addressed and dismissed this argument in the *Qwest Order*: “We believe, therefore, that when the D.C. Circuit stated in 2001 that the requirements of section 251(c) had not been fully implemented, it merely referred to the fact that the Commission had not yet found the requirements of section 251(c) were fully implemented.” *Qwest Order* at ¶ 53 n.133 (citing *Ass’n of Commc’ns Enters.*, 235 F.3d at 666).

²³⁰ *Qwest Order* at ¶ 56.

²³¹ *Id.*

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B. Section 251(c) Has Been Fully Implemented in Anchorage.

Even if Section 10(d) is viewed as requiring an inquiry into the competitiveness of the relevant market, the pro-competitive aims of Section 251(c)(3) have been fulfilled in Anchorage. There is actual facilities-based competition, as well as a number of alternative intermodal networks, in the market, and no CLEC can credibly argue that it would be “impaired” without access to UNEs in Anchorage. Therefore, even under this more demanding standard, Section 251(c) has been fully implemented.

The *TRRO* did not purport to establish the only permissible standard for non-impairment. The FCC invited forbearance petitions from carriers which cannot make the showings required in the *TRRO* for UNE relief.²³² Given the small customer base in Anchorage, it is impossible for the study area to satisfy the thresholds contained in the *TRRO*. However, Anchorage does meet the relevant requirements of the Act through its extensive and rigorous facilities-based competition.

At a minimum, full implementation has occurred with respect to GCI. GCI portrays itself as an emerging CLEC that is able to serve the Anchorage market as a result of UNE regulation.²³³ In actuality, GCI now dominates the Anchorage telecommunications market. GCI boasts that its bundles of local, long-distance, Internet and wireless services are unmatched in the market.²³⁴ GCI’s failure to complete its own network no longer justifies saddling ACS with unbundling measures, when [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of GCI’s current residential customers and [BEGIN CONFIDENTIAL][END CONFIDENTIAL]

²³² *TRRO* at ¶ 39.

²³³ GCI Opposition at 85; Sappington Decl. at ¶ 48.

²³⁴ GCI Opposition at 6-7.

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of its overall customers can, by GCI's own estimate, be economically served exclusively by GCI's network.²³⁵ There is no reason to provide GCI with further assistance in "entering" the Anchorage telecommunications market.

V. CONCLUSION

ACS requests that the Commission forbear from all the unbundling obligations of Section 251(c)(3), and the pricing standard set forth in Section 252(d)(1) of the Act applicable to UNEs, throughout the Anchorage study area. GCI has not produced information about its network or its customers sufficient to refute ACS's evidence that facilities-based competition in Anchorage is robust and sufficient to justify forbearance throughout the study area. Indeed, GCI will be able to serve virtually all customers using its own facilities within a commercially reasonable period of time. The requested forbearance will promote greater competition and stimulate facilities investment by all competitors, thus serving the public interest.

If the Commission cannot find that Section 251(c)(3) has been fully implemented with respect to the entire Anchorage market, it should find that that section has been fully implemented with respect to GCI. ACS respectfully urges expedited consideration of this Petition in light of GCI's stated transition plans.

²³⁵ Zarakas Decl. at ¶¶ 9, 10.

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Respectfully submitted,

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